

Nebraska Debt Management Statutes

Neb. Rev. Stat. § 69-1201. Terms, defined.

As used in sections 69-1201 to 69-1217, unless the context otherwise requires:

- (1) Debt management shall mean the planning and management of the financial affairs of a debtor for a fee from the debtor and the receiving therefrom of money or evidences thereof for the purpose of distributing the same to his or her creditors in payment or partial payment of his or her obligations;
- (2) Licensee shall mean any individual, partnership, limited liability company, unincorporated association, or corporation licensed under such sections;
- (3) Secretary shall mean the Secretary of State;
- (4) Debtor shall mean a wage earner whose principal income is derived from wages, salary, or commission;
- (5) Office shall mean each location by street number, building number, city, and state where any person engages in debt management; and
- (6) Creditor shall mean a person for whose benefit money is being collected and disbursed by licensees.

Neb. Rev. Stat. § 69-1202. Debt management; exceptions to act.

Any person engaged in debt management shall be deemed to be rendering financial planning service, but sections 69-1201 to 69-1217 shall not apply to the following when engaged in the regular course of their respective businesses and professions:

- (1) Attorneys at law;
- (2) Banks, fiduciaries, financing and lending institutions, as duly authorized and admitted to transact business in this state and performing credit and financial adjusting service in the regular course of their principal business;
- (3) Title insurers and abstract companies, while doing an escrow business;
- (4) Employees of licensees under sections 69-1201 to 69-1217; or
- (5) Judicial officers or others acting under court orders.

Neb. Rev. Stat. § 69-1203. License; required.

After January 1, 1969, it shall be unlawful for any person to engage in the business of debt management without first obtaining a license as required in sections 69-1201 to 69-1217.

Neb. Rev. Stat. § 69-1204. License; application; fees; bond; expiration; copy of contract.

Any person desiring to obtain a license to engage in the debt management business in this state shall file with the secretary an application in writing, under oath, setting forth his or her business name, the exact location of his or her office, names and addresses of all officers and directors if an association or a corporation, if a partnership, the partnership name and the names and addresses of all partners, and if a limited liability company, the company name and the names and addresses of all members, and a copy of the certificate of registration of trade name, certificate of partnership, articles of organization, or articles of incorporation. At the time of filing the application the applicant shall pay to the secretary a license fee of two hundred dollars for the main office within each county and one hundred dollars for each additional office. An initial investigation fee of two hundred dollars shall also be paid to the secretary at the time of filing the application. At the time of filing the application the applicant shall furnish a bond to the people of the state in the sum of ten thousand dollars, conditioned upon the faithful accounting of all money collected upon accounts entrusted to such person engaged in debt management, and their employees and agents. The aggregate liability of

the surety to all claimants doing business with the office for which the bond is filed shall in no event exceed the amount of such bond. The bond or bonds shall be approved by the secretary and filed in the office of the Secretary of State. No person, firm, limited liability company, or corporation shall engage in the business of debt management until a good and sufficient bond is filed in accordance with the provisions of sections 69-1201 to 69-1217.

Each licensee shall furnish with his or her application a blank copy of the contract he or she intends to use between himself or herself and the debtor and shall notify the secretary of all changes and amendments thereto within thirty days of such changes and amendments.

The license issued under sections 69-1201 to 69-1217 shall expire on December 31 next following its issuance unless sooner surrendered, revoked, or suspended, but may be renewed as provided in such sections.

Neb. Rev. Stat. § 69-1205. License; application; investigation; issuance.

Upon the filing of the application and the payment of the fees and the approval of the bond, the secretary shall investigate the facts and if he or she finds that the financial responsibility, experience, character, and general fitness of the applicant and of the members thereof, if the applicant is a partnership, a limited liability company, or an association, and of the officers and directors thereof, if the applicant is a corporation, are such as to command the confidence of the community to warrant belief that the business will be operated fairly and honestly within the purposes of sections 69-1201 to 69-1217 and that the applicant or the applicant and the members thereof or the applicant and the officers and directors thereof have not been convicted of a felony, or that such person has not had a record of having defaulted in the payment of money collected for others, including the discharge of such debts through bankruptcy proceedings, the secretary shall issue the applicant a license to engage in the debt management business in accordance with sections 69-1201 to 69-1217. The secretary may require as part of the application a credit report and other information.

Neb. Rev. Stat. § 69-1206. License; renewal; fee; bond.

Each licensee on or before December 1 may make application to the secretary for renewal of its license. The application shall be on the form prescribed by the secretary, and shall be accompanied by a fee of one hundred dollars, together with a bond as in the case of an original application. A separate application shall be made for each office.

Neb. Rev. Stat. § 69-1207. License; Secretary of State; deny; revoke; suspend; nontransferable.

(1) The secretary may deny, revoke or suspend any license issued or applied for under sections 69-1201 to 69-1217 for the following causes:

- (a) Conviction of a felony;
- (b) For violating any of the provisions of sections 69-1201 to 69-1217;
- (c) For fraud or deceit in procuring the issuance of a license under sections 69-1201 to 69-1217;
- (d) For indulging in a continuous course of unfair conduct; or
- (e) For insolvency, being adjudicated a bankrupt, being placed in receivership, or assigning for the benefit of creditors by any licensee or applicant for a license under sections 69-1201 to 69-1217.

(2) The denial, revocation or suspension shall only be made upon specific charges in writing, under oath, filed with the secretary, whereupon a hearing shall be had as to the reasons for any denial, revocation or suspension and a certified copy of the charges shall be served on the licensee or applicant for license not less than ten days nor more than thirty days prior to the hearing.

(3) No license shall be transferable or assignable.

Neb. Rev. Stat. § 69-1208. Rules and regulations; promulgation.

Rules and regulations issued by the secretary under sections 69-1201 to 69-1217 shall be promulgated in accordance with the provisions of the Administrative Procedure Act.

Neb. Rev. Stat. § 69-1209. Licensee; contract with debtor required; contents.

Each licensee shall make a written contract between himself and a debtor and immediately furnish the debtor with a true copy of the contract. The contract shall set forth the complete list of the debtor's obligations to be adjusted, a complete list of the creditors holding such obligations, the total charges agreed upon for the services of the licensee and the beginning and expiration date of the contract. No contract shall extend for a period longer than thirty-six months.

Neb. Rev. Stat. § 69-1210. Licensee; bank account; separate; books and records.

A licensee shall maintain a separate bank account for the benefit of debtors in which all payments received from debtors for the benefit of creditors shall be deposited and in which all payments shall remain until a remittance is made to either the debtor, creditor, or the licensee for fees. Every licensee shall keep, and use in his business, books, accounts and records which will enable the secretary to determine whether such licensee is complying with the provisions of sections 69-1201 to 69-1217 and with the rules and regulations of the secretary. Every licensee shall preserve such books, accounts and records for at least five years after making the final entry on any transaction recorded therein.

Neb. Rev. Stat. § 69-1211. Licensee; examination; cost; payment.

The secretary may examine without notice the condition and affairs of each licensee. In connection with any examination, the secretary may examine on oath any licensee, and any director, officer, employee, customer, creditor or stockholder of a licensee concerning the affairs and business of the licensee. The secretary shall ascertain whether the licensee transacts its business in the manner prescribed by law and the rules and regulations issued there under. The licensee shall pay the actual cost of the examination as determined by the secretary, which fee shall be deposited in the state treasury to the credit of the General Fund. Failure to pay the examination fee within thirty days of receipt of demand from the secretary shall automatically suspend the license until the fee is paid. In the investigation of alleged violations of sections 69-1201 to 69-1217, the secretary may compel the attendance of any person or the production of any books, accounts, records and files used therein, and may examine under oath all persons in attendance pursuant thereto.

Neb. Rev. Stat. § 69-1212. Licensee; debtor; fee; agreement; limitations.

The fee of the licensee to be charged the debtor shall be agreed upon in advance and stated in the contract and provision for settlement in case of cancellation or prepayment shall be clearly stated in the contract. The total fee to be charged by the licensee shall not be more than fifteen percent of the amount of money agreed to be paid through the licensee. Fees shall be amortized over the length of the contract and no more than the monthly amortized amount may be applied to charges while the contract is in full force and effect, except that the licensee may require an initial payment by the debtor of an amount not to exceed twenty-five dollars which shall be credited to the total fee to be charged. In the event of cancellation, the licensee shall be entitled to receive not more than twenty-five percent of the remaining unamortized fee agreed upon in the contract. No licensee shall be entitled to any fee or charge against the debtor upon any contract until the debt management

program is arranged and approved by the debtor. A contract shall not be effective until a debtor has made a payment to the licensee for distribution to his creditors.

Neb. Rev. Stat. § 69-1213. Licensee; duties.

Each licensee shall:

- (1) Keep complete and adequate records during the term of the contract and for a period of five years from the date of cancellation or completion of the contract with each debtor, which records shall contain complete information regarding the contract, extensions thereof, payments, disbursements and charges, which records shall be open to inspection by the secretary and his duly appointed agents during normal business hours;
- (2) Make remittances to creditors within fifteen days after receipt of any funds, and within seven days if such funds are in the form of cash, less fees and costs, unless the reasonable payment of one or more of the debtor's obligations requires that such funds be held for a longer period so as to accumulate a sum certain. In no case may the licensee retain funds longer than thirty-five days after receipt from the debtor;
- (3) Upon request furnish the debtor a written statement of his account each ninety days, or a verbal accounting at any time the debtor may request it during normal business hours;
- (4) Accept no account unless a written and thorough budget analysis indicates that the debtor can reasonably meet the payments required by the budget analysis; and
- (5) In the event a compromise of a debt is arranged by the licensee with any one or more creditors, the debtor shall have the full benefit of that compromise.

Neb. Rev. Stat. § 69-1214. Licensee; acts forbidden.

No licensee shall:

- (1) Purchase from a creditor any obligation of a debtor;
- (2) Operate as a collection agent and as a licensee as to the same debtor's account;
- (3) Execute any contract or agreement to be signed by the debtor unless the contract or agreement is fully and completely filled in and finished;
- (4) Receive or charge any fee in the form of a promissory note or other promise to pay, or receive or accept any mortgage or other security for any fee, either as to real or personal property;
- (5) Pay any bonus or other consideration to any person for the referral of a debtor to his business, nor shall he accept or receive any bonus, commission or other consideration for referring any debtor to any person for any reason; or
- (6) Advertise his services, display, distribute, broadcast or televise or permit to be displayed, advertised, distributed, broadcasted or televised his services in any manner whatsoever wherein is made any false, misleading or deceptive statement or representation with regard to the services to be performed by the licensee or the charges to be made therefor.

Neb. Rev. Stat. § 69-1215. Unlawful acts; penalty.

Any person, partnership, limited liability company, association, corporation, or other group of individuals, however organized, or any owner, partner, member, officer, director, employee, agent, or representative thereof who willfully or knowingly engages in the business of debt management without the license required by sections 69-1201 to 69-1217 shall be guilty of a Class II misdemeanor.

Neb. Rev. Stat. § 69-1216. Limitation of actions.

All actions in any of the courts of this state under the provisions of sections 69-1201 to 69-1217 shall be commenced within two years next after the cause of action shall accrue.

Neb. Rev. Stat. § 69-1217. Fees; disposition.

All fees collected under the provisions of sections 69-1201 to 69-1217 shall be paid promptly into the state treasury to the credit of the General Fund.